

### **REMARKS**

Applicants respectfully submit, contemporaneously herewith, a Request for Continued Examination pursuant to 37 C.F.R. § 1.114.

Claims 35-38, 40-42, 44-50, 52-54, 56-62, and 67-71 are pending. Claims 1-34, 39, 43, 51, 55, and 63-66 have been cancelled.

### **Claim Rejections - 35 U.S.C. §102(b)**

Claims 35-38, 40-42, 44-50, 52-54, 56, 57, 59, 60, and 69-71 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,665,089 to Dall ("Dall '089").

Dall '089 discloses the use of ladder plate 81, as shown in Fig. 8, in combination with ladder plate 82 for bracing complex fracture 83 with butterfly fragment 84. The end openings of ladder plate 81 contain single-screw fixation means 38, which are screwed to a bone. Additionally, as described with reference to Fig. 2, a ladder plate, such as ladder plate 36, may be mounted to bone 30 and secured by cerclage cables 64 passing through holes 48. Each loop of cable 64 is pulled tight and locked in place by crimping respective bridges 42, as shown in Fig. 3.

Applicants respectfully submit that amended independent Claims 35, 54, and 60 are not anticipated by Dall '089, as Dall '089 fails to disclose each and every limitation called for in amended independent Claims 35, 54, and 60. Specifically, each of amended independent Claims 35, 54, and 60 call for an implant for the treatment of bone fractures including, *inter alia*, a main plate adapted to be fixed to a bone and a plate-shaped outrigger element adapted to be fixed to a bone, the implant further including a U-shape flexible connection element having a pair of U limbs extending outwardly from a U base, wherein the main plate has at least one pair of first passages and the outrigger element has at least one pair of second passages through which the U limbs of the connection element are guidable, each of the pair of U limbs having a terminal end, *wherein, in the assembled state of the implant, the U base of the connection element is positioned outside of an aperture of the outrigger element, and the terminal end of one of the pair of U limbs passing through one of the pair of first passages in the main plate from the first side of the main plate to the second side of the main plate and the terminal end of the other one of the pair of U limbs passing through the other one of the pair of first passages in the main plate from the first side of the main plate to the*

*second side of the main plate, wherein, in the assembled state of the implant, the terminal ends of both of the pair of U limbs are positioned adjacent to the second side of the main plate.*

Assuming, *arguendo*, that cerclage cable 64 of Dall '089 could be formed to have a U-shape, Dall '089 fails to disclose a U-shaped flexible connection element having a pair of U limbs extending outwardly from a U base and that, in the assembled state of the implant, *the U base of the connection element is positioned outside of an aperture of the outrigger element*. Specifically, in forming the rejection, the Examiner contends that the portion of cerclage cable 64 extending through the opening the bone plate 81 of Dall '089 forms a U base and that the opposing portions of cerclage cable 64 extending from opposite sides of bone plate 81 form the U limbs. However, amended independent Claims 35, 54, and 60, each call for the U base of the connection element being positioned outside of an aperture of the outrigger element and adjacent to the outrigger element in the assembled state of the implant. Thus, the portion of cerclage cable 64 of Dall '089 extending through the aperture in bone plate 81 cannot be the U base called for in amended independent Claims 35, 54, and 60.

Moreover, Dall '089 fails to disclose that the terminal end of one of the pair of U limbs passes through one of the pair of first passages in the main plate from the first side of the main plate to the second side of the main plate and the terminal end of the other one of the pair of U limbs passes through the other one of the pair of first passages in the main plate from the first side of the main plate to the second side of the main plate, wherein, in the assembled state of the implant, the terminal ends of the pair of U limbs are positioned adjacent to the second side of the main plate. In contrast to amended independent Claims 35, 54, and 60, the terminal ends of cerclage cables 64 are positioned adjacent to opposite sides of bone plate 81, which the Examiner has identified as the outrigger element called for in amended independent Claims 35, 54, and 60.

For at least the foregoing reasons, Applicants respectfully submit that amended independent Claims 35, 54, and 60, as well as Claims 36-38, 40-42, 44-50, 52, 53, 56, 57, and 59, which depend therefrom, are not anticipated by Dall '089.

Applicants respectfully submit that Claims 69-71 are not anticipated by Dall '089, as Dall '089 fails to disclose each and every limitation of independent Claim 69. Specifically, independent Claim 69 calls for an implant for the treatment of bone fractures including, *inter alia*, a main plate adapted to be fixed to a bone and having at least one pair of passages formed therein, and

a plate-shaped monolithic outrigger element adapted to be fixed to the bone, the monolithic outrigger element including a flexible connection element having a pair of arms.

In contrast to amended independent Claim 69, nowhere does Dall '089 disclose a plate-shaped monolithic outrigger element including a flexible connection element having a pair of arms. In contrast, Dall '089 discloses bone plate 81 having a separate, independent cerclage cable 64.

For at least the foregoing reasons, Applicants respectfully submit that amended independent Claim 69, as well as Claims 70 and 71 which depend therefrom, are not anticipated by Dall '089.

#### **Claim Rejections - 35 U.S.C. §103(a)**

Claims 58, 61, 62, and 67-71 are rejected under 35 U.S.C. § 103(a) as being obvious over Dall '089 in view of WO03/032849 to Tassin ("Tassin '849").

In forming the rejection of Claims 58, 61, 62, 67, and 68, the Examiner relies on Dall '089 as disclosing each and every limitation of independent Claim 35, from which Claims 58, 61, 62, 67, and 68 depend. However, for at least the reasons set forth above with respect to independent Claim 35, Dall '089 fails to disclose or suggest each and every limitation of independent Claim 35. The Examiner's additional citation of Tassin '849 fails to overcome this deficiency, as neither Dall '089 nor Tassin '849, either alone or in combination, disclose or suggest each and every limitation of amended independent Claim 35.

Thus, for at least the foregoing reasons, Applicants respectfully submit that Claims 58, 61, 62, 67, and 68, which depend from independent Claim 35, are not obvious over Dall '089 in view of Tassin '849.

#### **Conclusion**


It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and respectfully requests allowance thereof.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Application Serial No. 10/814,926  
Amendment dated July 24, 2009  
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Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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July 24, 2009

Date